

ITEM 24

PROPOSED AMENDMENT OF PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459

Reconsideration Directed by Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138)

Amendment Directed by Statutes 2006, Chapter 37 (Budget Act of 2006)

Mandate Reimbursement Process

05-RL-4202-02 (CSM 4204 & 4485)

EXECUTIVE SUMMARY

On May 28, 2006, the Commission reconsidered its prior decision in the Mandate Reimbursement Process test claim, determining that the test claim statutes do not constitute a reimbursable state mandated program effective July 1, 2006. After reconsidering the prior decision, AB 138 also requires the Commission to revise the parameters and guidelines, if necessary. Thus, it is necessary for the Commission to revise the parameters and guidelines to reflect the decision on reconsideration. Upon adoption of staff's proposed amendments to the parameters and guidelines, the Commission will have completed the requirements of AB 138.

Background

Original Decision

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process* Statement of Decision, determining that the test claim statutes impose a reimbursable mandate on local agencies and school districts. On November 20, 1986, the Commission adopted parameters and guidelines,¹ determining that the following activities are reimbursable:

A. Scope of the Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

¹ See pages 229-230 of the Administrative Record.

B. Reimbursable Activities—Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities –Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

The phrase, “including court responses, if an adverse Commission ruling is later reversed” under heading “B” above was amended out in March 1987 and replaced with “including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order.” (See Administrative Record, p. 229).

In addition to this March 1987 amendment, the parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims.² Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997),³ 1997 (amended Sept. 1997),⁴ 1998 (amended Oct. 1998),⁵ 1999

² Administrative Record, page 295 et seq. (especially pp. 302-303).

³ Administrative Record, pages 355-426, especially page 425.

⁴ Administrative Record, pages 427-473.

⁵ Administrative Record, pages 477-551. This amendment also removed the cap on claims for legal costs, so that those costs would be claimed under the contracted services provision.

(amended Sept. 1999),⁶ 2000 (amended Sept. 2000),⁷ 2001 (amended Oct. 2001),⁸ 2002 (amended Feb. 2003),⁹ 2003 (amended Sept. 2003),¹⁰ 2004 (amended Dec. 2004),¹¹ and 2005 (amended Sept. 2005).¹² In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

Reconsideration

Statutes 2005, chapter 72, section 17 (AB 138) directed the Commission to reconsider whether the *Mandate Reimbursement Process* program (CSM Nos. 4204 & 4485) constitutes a reimbursable state-mandated program under article XIII B, section 6 in light of subsequently enacted state or federal statutes or case law. The Commission's decision is effective July 1, 2006, so that costs incurred up to that date would be reimbursable.

On reconsideration, the Commission determined that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution. As to the 1984 test claim statute, Government Code section 17556, subdivision (f) prohibits the Commission from finding costs mandated by the state if:

The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Applying this statute, the Commission found that Statutes 1984, chapter 1459 is reasonably within the scope of or necessary to implement article XIII B, section 6 which was enacted in Proposition 4, a ballot measure approved in a statewide election. Therefore, the Commission determined that the test claim statutes do not constitute a reimbursable state mandated program, and denied the test claim effective July 1, 2006.

⁶ Administrative Record, pages 569-678. This amendment also updated text to conform with 1998 amendments to the Commission's statutory scheme, updated parameters and guidelines text, and included reimbursement for participation in Commission workshops.

⁷ Administrative Record, pages 679-736.

⁸ Administrative Record, pages 737-763.

⁹ Administrative Record, pages 781-904.

¹⁰ Administrative Record, pages 905-986.

¹¹ Administrative Record, pages 987-1044.

¹² Administrative Record, pages 1045-1106.

Statutes 2005, chapter 72, section 17 (AB 138) also directed the Commission to "revise the parameters and guidelines," as follows:

The commission shall, if necessary, revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, include a reasonable reimbursement methodology as defined in Section 17518.5 of the Government Code. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006. (Emphasis added.)

Thus, based on the plain language of AB 138, the Commission is required, if necessary, to revise its parameters and guidelines to be consistent with this reconsideration. If the parameters and guidelines are revised, the Controller is required to revise the claiming instructions to be consistent with the revised parameters and guidelines.

Staff's Proposed Parameters and Guidelines Amendments

Staff reviewed the existing parameters and guidelines, the Statement of Decision on reconsideration, Statutes 2005, chapter 72, section 17, and Statutes 2006, chapter 38 (Budget Act of 2006) and finds that the following revisions to the parameters and guidelines are necessary:

Title

Staff modified the title and captions.

I. Summary of the Mandates

Staff proposes to update this section to conform to current format and to describe the new Statement of Decision on reconsideration.

IV. Reimbursable Activities

Staff proposes to revise this section to allow local agencies and school districts to be reimbursed for the costs to *prepare successful claims that were filed before July 1, 2006*. Claimants have incurred costs to prepare and submit 102 test claims, and 115 incorrect reduction claims before July 1, 2006. However, local agencies and school districts are not eligible to claim these costs before the Commission hears and approves the claims. Language is added to define a "successful" claim as a test claim or incorrect reduction claim that was filed before July 1, 2006 and is heard and approved by the Commission. Language that originally specified that costs incurred for presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions were reimbursable, is now stricken and instead these costs are described as "not reimbursable. Also, the reimbursable activities for "2. Reimbursement Claims" and "3. Training" is stricken.

V-IX – Other Sections

Section V. Claim Preparation and Submission, A. Direct Cost Reporting. Staff proposes to strike the categories of "Fixed Assets and Equipment" and "Training."

Section VII. Offsetting Savings and Reimbursements.

Staff proposes to update this section by changing the word "Savings" to "Revenues." This change will conform the parameters and guidelines to section 1183.1, subdivision (a)(7) of the regulations.

Section X. Legal and Factual Basis for the Parameters and Guidelines. This section is revised to reference the Statement of Decision on reconsideration.

Appendix A.

Staff proposes elimination of Appendix A because the Commission is only required to adopt it if a local agency or school district contracts with an independent contractor for the preparation and submission of *reimbursement claims*. In section IV, Reimbursable Activities, the reimbursable activity of "preparing reimbursement claims" is stricken based on the Commission's denial of the test claim on reconsideration. Thus, staff finds that this Appendix is no longer required.

Conclusion and Recommendation

Staff concludes that effective, July 1, 2006, pursuant to Statutes 2005, chapter 72, section 17 that the parameters and guidelines for the Mandate Reimbursement Process must be revised.

Therefore, staff recommends that the Commission:

- Adopt staff's proposed amendments to the parameters and guidelines, beginning on page 7.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

